

Article - State Government

[\[Previous\]](#)[\[Next\]](#)

§6.5–301.

(a) The appropriate regulating entity may not approve an acquisition unless it finds the acquisition is in the public interest.

(b) An acquisition is not in the public interest unless appropriate steps have been taken to:

(1) ensure that the value of public or charitable assets is safeguarded;

(2) ensure that the value of public or charitable assets is spent in a manner that corresponds with the potential risk associated with the acquisition;

(3) ensure that:

(i) the fair value of the public or charitable assets of a nonprofit health service plan or a health maintenance organization will be distributed to the Maryland Health Care Trust established under § 6.5-401 of this title; or

(ii) 1. 40% of the fair value of the public or charitable assets of a nonprofit hospital will be distributed to the Maryland Health Care Trust established under § 6.5-401 of this title; and

2. 60% of the fair value of the public or charitable assets of a nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust that is:

A. dedicated to serving the unmet health care needs of the affected community;

B. dedicated to promoting access to health care in the affected community;

C. dedicated to improving the quality of health care in the affected community; and

D. independent of the transferee;

(4) ensure that no part of the public or charitable assets of the acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit health entity; and

(5) ensure that no officer, director, or trustee of the nonprofit health entity receives any immediate or future remuneration as the result of an acquisition or proposed acquisition except in the form of compensation paid for continued employment with the acquiring entity.

(c) The regulating entity may determine that a distribution of assets of a nonprofit health entity is not required under this section if the transaction is:

- (1) determined not to be an acquisition;
- (2) in the ordinary course of business; and
- (3) for fair value.

(d) In determining fair value, the appropriate regulating entity may consider all relevant factors, including, as determined by the regulating entity:

(1) the value of the nonprofit health entity or an affiliate or the assets of such an entity that is determined as if the entity had voting stock outstanding and 100% of its stock was freely transferable and available for purchase without restriction;

- (2) the value as a going concern;
- (3) the market value;
- (4) the investment or earnings value;
- (5) the net asset value; and
- (6) a control premium, if any.

(e) (1) In determining whether an acquisition is in the public interest, the appropriate regulating entity shall consider:

(i) whether the transferor exercised due diligence in deciding to engage in an acquisition, selecting the transferee, and negotiating the terms and conditions of the acquisition;

(ii) the procedures the transferor used in making the decision, including whether appropriate expert assistance was used;

(iii) whether any conflicts of interest were disclosed, including conflicts of interest of board members, executives, and experts retained by the transferor, transferee, or any other parties to the acquisition;

(iv) whether the transferor will receive fair value for its public or charitable assets;

(v) whether public or charitable assets are placed at unreasonable risk if the acquisition is financed in part by the transferor;

(vi) whether the acquisition has the likelihood of creating a significant adverse effect on the availability or accessibility of health care services in the affected community;

(vii) whether the acquisition includes sufficient safeguards to ensure that the affected community will have continued access to affordable health care; and

(viii) whether any management contract under the acquisition is for fair value.

(2) In determining whether a nonprofit health entity has exercised due diligence as required under paragraph (1)(i) of this subsection, the appropriate regulating entity may not determine that due diligence was exercised unless the nonprofit health entity considered the risks of an acquisition, including whether an acquisition:

(i) would result in diseconomies of scale; or

(ii) would violate federal or State antitrust laws.

(f) The public or charitable assets distributed to a public or nonprofit charitable entity or trust in accordance with subsection (b)(2) of this section shall be in the form of cash.

(g) The appropriate regulating entity shall determine whether a payment by a nonprofit health entity, required under an agreement or contract for the acquisition of a nonprofit health entity if the agreement or contract is broken by the nonprofit health entity, is in the public interest.

[\[Previous\]](#)[\[Next\]](#)